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Supreme Court U.S.
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Docket No. 02-406

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY,

Petitioner,

v.

KATHLEEN MADALINE JARVIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION

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Neither the decision of the court below nor the Petition present any justiciable issue warranting review by the Court, and accordingly, the Petition should be denied.

REASONS FOR DENYING THE PETITION

1. The Petition states in the preamble to the "Questions Presented" that:

> This case arises in the context of a confusing and unsettled area of federal law, to wit, the correct procedures to be followed by the courts and parties in the event that a jury renders an inconsistent verdict.[1]

The "inconsistent verdict" house of cards created by Petitioner, in a contrived effort to present justiciable issues warranting review by the Court collapses under its own weight in the face of the record of the trial of this case and the disposition of Petitioner's arguments, premised upon Rules 49 and 51,[2] by the Court of Appeals below.

Fact of Record. The jury verdict was not inconsistent in any respect. The verdict was precisely responsive to the *agreed* jury instructions, which stated:

> plaintiff brings this action on the basis of two theories of liability: Negligence and strict liability . . . .
>
> If you find that the cruise control system in the Aerostar was not defective and that Ford was not negligent, you will not reach the issues raised in the remainder of the charge.

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1 Petition at i.

2 FED. R. CIV. P. 49 and 51.

> If, however, you find either that Ford was negligent in the design of the 1991 Aerostar cruise control system, or that the 1991 Aerostar cruise control system was itself defective, you must next consider whether that negligence or defect was a substantial factor in causing plaintiff's injury . . . . If you find that neither the defendant's negligence nor the cruise control defect was a substantial factor in causing the injury, then plaintiff may not recover.
>
> If you find that either defendant's negligence or the cruise control defect was a substantial factor in causing plaintiff's injury, you will proceed to consider comparative fault . . . .
>
> If you find either defendant's negligence or the cruise control defect was a substantial factor in causing plaintiff's injury, you must next consider whether the plaintiff was also negligent.[3]

Fact of Record. Petitioner Ford did not voice any objection to the jury instructions until *after* the jury returned its verdict finding for Petitioner Ford on the defect claim, but for Respondent Jarvis on the negligence claim.

Fact of Record. The verdict of the jury was directly responsive to the agreed verdict form. Petitioner Ford *agreed* to the form of verdict submitted to the jury. The jury verdict form,[4] although entitled "Special Verdict Questions," called for a general verdict in response to special questions addressing both liability theories (strict product liability and negligence) on the basis of which the case was tried by the parties.

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[3] Jarvis v. Ford Motor Co., 283 F.3d 33, 54-55 (2d Cir. 2002). *See* Appendix to the Petition at 35a-36a (hereinafter "Pet. App.").

[4] *See* Pet. App. at 69a-73a.

Fact of Record. There is no inconsistency in the jury verdict finding no strict product liability but finding negligence on the part of Petitioner Ford. The jury findings in both respects were directly responsive to the trial court's agreed jury instructions and the agreed jury verdict form.

2. Petitioner then characterizes this case as presenting:

> the Court with the opportunity to resolve a long festering conflict among the courts of appeals, not only as to proper procedures to be followed by district courts and parties in the event that a jury renders an inconsistent verdict . . . .[5]

Nowhere in the Petition is there any reference, however, to any decision of any Court of Appeals in conflict with the decision of the court below in this case, in any respect. The Petition strives to create a "conflict" for resolution by the Court where none exists.

With respect to Rule 51, the court below held that Petitioner Ford had waived any objection to the jury verdict in response to the trial court's instructions by not raising the objections before the jury retired to deliberate, as strictly required by Rule 51. The court below even gave Petitioner Ford a post-argument opportunity to demonstrate where, in the trial record or anywhere outside of the record, Ford had preserved its objection pursuant to Rule 51.[6] Upon the basis of the record and the post argument submission by Ford, the court below held that:

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5 Petition at 1.

6 *See* United States Court of Appeals for the Second Circuit Order for Supplemental Letter Briefs annexed herewith at Appendix "A".

> under the principles of Rule 51, Ford had waived its objection to verdict inconsistency.[7]

In rejecting Ford's inconsistent verdict arguments based upon Rule 49, the court below held that Rule 49:

> is inapplicable here because the alleged inconsistency [in the jury's verdict] was not among responses to interrogatories regarding "issues of fact," but between two general verdicts based on different legal theories.[8]

The court below held further that a motion under Rule 49:

> cannot, as a matter of law, provide any relief for a party challenging a conflict between general verdicts based on an instruction given in the jury charge and repeated on the verdict sheet.[9]

The court below also declined to "shoehorn this case into Rule 49 in order to avoid" the result of Ford's waiver of its objection to verdict inconsistency under the principles of Rule 51.

The court below succinctly summed up the situation sought to be fashioned by Ford:

> In this ten-year litigation, the issue of the jury charge was litigated extensively. Ford asked for this jury charge, presumably for strategic reasons, and was well apprised of the law of waiver. To excuse Ford from the well-established rules of waiver

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7 *Jarvis*, 283 F.3d at 62; Pet. App. at 51a.

8 *Jarvis*, 283 F.3d at 56; Pet. App. at 39a-40a.

9 *Jarvis*, 283 F.3d at 56; Pet. App. at 40a.

> would permit precisely the sort of "sandbagging" that the rules are designed to prevent, while undermining the ideal of judicial economy that the rules are meant to serve.[10]

The Petition presents no conflict, arising from the disposition by the court below of Ford's arguments premised upon Rules 49 and 51, with any decision of any other Court of Appeals. In an effort to gain the attention of the Court, the Petition seeks to create jury trial constitutional issues, which clearly do not arise from or exist in the decision of the court below.

This Petition, like hundreds of others before, is the last foray in Ford's attempt to deprive Respondent Jarvis of justice.

The Petition, like thousands of others before, should be denied as not warranting review by the Court.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Dated: New York, New York
October 10, 2002

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[10] *Jarvis*, 283 F.3d at 62; Pet. App. at 51a.

Respectfully Submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED May 24, 2001
No: 99-9405(L)
00-9215 (CON)

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 24th day of May two thousand and one,

Present:

HON. JAMES L. OAKES,
HON. ELLSWORTH A. VANGRAAFEILAND,
HON. SONIA SOTOMAYOR,
Circuit Judges.

KATHLEEN MADALINE JARVIS, Individually and as a parent and guardian of Paul Michael Attila Jarvis, a minor,

Plaintiff-Appellant,

v.

FORD MOTOR COMPANY,

Defendant-Appellee.

IT IS HEREBY ORDERED:

That the parties file supplemental letter briefs of no more than two pages in length as follows:

Counsel for appellee Ford Motor Company is ordered to submit a letter brief and any attachments by Thursday May 31, 2001at 5 p.m., and counsel for appellant Kathleen Madaline Jarvis is ordered to respond by letter brief and any attachments by Thursday June 7, 2001 at 5 p.m. providing the following information:

The district court's October 27, 1999 opinion explains that at a July 12, 1999 Pre-Trial Conference "and times previous to the conference, defense counsel made it clear that they believed the case should have gone to the jury on either a negligence or strict liability theory, but not both." *Jarvis v. Ford Motor Co.*, 69 F. Supp. 2d 582, 588-89 (S.D.N.Y. 1999). The district court also notes that "[t]he dual charge issue had been raised in an exchange of correspondence with the Court pretrial." *Id.* at 589 n.12.

The parties are directed to supply this Court with the page numbers of the Joint Appendix at which are found the record of any objections made before the jury was charged to both theories of liability—negligence and strict liability—being presented to the jury. The record of any such objections may include the transcript of conferences with the district court, letters submitted to the district court, or any other evidence of these objections. If evidence of such objections exists outside of the documents contained in the Joint Appendix, the parties are requested to append a copy of these additional documents to their letter briefs and provide in their letters briefs a short explanation of the source of these documents, how their contents came to be considered by the district court, and any

other information that may be necessary to understand their content.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ LUCILLE CARR
Lucille Carr